

1 STEFANIE T. SHARP, ESQ.
2 Nevada Bar No. 8661
3 **ROBISON, BELAUSTEGUI, SHARP & LOW**
4 71 Washington Street
5 Reno, Nevada 89503
6 Tel: 775-329-3151
7 Fax: 775-329-7941
8 E-mail: ssharp@rbsllaw.com

9 *Attorneys for William McGrane*

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12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF NEVADA**

14 IN RE: Case No. BK-N-14-50333-btb

15 ANTHONY THOMAS and Chapter 7
16 WENDI THOMAS,

17 Debtors.

18
19 WILLIAM MCGRANE,

Adv. Pro. No. _____

20 Plaintiff,

21 **COMPLAINT TO DETERMINE**
22 **NONDISCHARGEABILITY OF DEBT**
23 **(11 U.S.C. §523(a))**

24 vs.

25 ANTHONY THOMAS,

26 Defendant.

27 Comes now, Plaintiff William McGrane ("Plaintiff"), by and through his undersigned
28 attorneys, and for his Complaint against Defendant Anthony Thomas ("Thomas") alleges as
follows:

I. JURISDICTION AND INTRODUCTORY MATTERS

1. On March 4, 2014, Thomas and his wife, Wendi Thomas, filed a Petition under
Chapter 11 of the United States Bankruptcy Code for reorganization and discharge of debts.

1 as counsel of record for Thomas in the matter of *Kenmark Ventures, LLC v. Tony Thomas, et al.*,
2 Santa Clara Superior Court Case No. 1-08-CV-130677 on February 7, 2011. The basis for the
3 Motion to Withdraw was Thomas' payment and performance defaults under the Fee Agreement.
4 The Motion to Withdraw was granted on May 4, 2011.
5

6 11. On February 28, 2012, Thomas initiated an action in the Superior Court of the
7 State of California in and for the County of Santa Clara arising out of the legal representation of
8 Thomas by TMG (the "State Court Action"). The Complaint in the State Court Action alleges
9 causes of action for Breach of Contract, Breach of Fiduciary Duty and Fraud against TMG;
10 Anthony Trepel, individually; and Plaintiff, individually.
11

12 12. As the causes of action alleged in the State Court Action all arise out of, are
13 connected with or related to the Fee Agreement after being served with the Complaint, Plaintiff
14 filed a Petition to Compel Arbitration and Stay Action (the "Arbitration Petition"). On July 3,
15 2013, the Superior Court of the State of California County of Santa Clara (the "State Court")
16 granted the Arbitration Petition, ordered the case to arbitration and stayed the State Court Action
17 pending completion of the arbitration.
18

19 13. Due to the entry of the Arbitration Order, no answers or other responsive
20 pleadings were filed in the State Court Action.

21 14. Thomas and his wife, Wendi Thomas, filed their Chapter 11 Petition on March 4,
22 2014. The State Court Action is not listed in their Schedules. *See*, Schedules, Dkt. 1, pgs. 34-35.
23

24 15. On March 17, 2014, Plaintiff filed a Motion For Comfort Order That Automatic
25 Stay Does Not Apply To Litigation Filed By Debtor Anthony Thomas Pre-Petition Or
26 Alternatively For Relief From Stay [California State Court Litigation], Dkt. 13.

27 16. Thereafter, Thomas and his wife agreed to Stipulate that the automatic stay did
28 not apply to the State Court Action. *See*, Stipulation For Comfort Order That Automatic Stay

Does Not Apply To Litigation Filed By Debtor Anthony Thomas Pre-Petition [California State Court Litigation], Dkt. 43 (the “Stipulation”).

17. On April 11, 2014, this Court entered its Order Approving Stipulation For Comfort Order That Automatic Stay Does Not Apply To Litigation Filed By Debtor Anthony Thomas Pre-Petition [California State Court Litigation], Dkt. 45 (the “Comfort Order”).

18. Due to the continuing detriment to Plaintiff caused by the existence of the unresolved State Court Action, and the failure of Thomas to prosecute the State Court Action, on April 28, 2014 Plaintiff initiated the arbitration with AAA ordered by the State Court, *McGrane v. Thomas*, AAA Case No. 01-14-0000-2456.

19. Counsel for McGrane provided AAA with the following documents in connection with the arbitration in the State Court Action on May 30, 2014: (i) the Stipulation; (ii) the Comfort Order; and (iii) the Notice of Entry of the Comfort Order, Dkt. 46.

20. On June 9, 2014, AAA advised the parties that it did “not believe the Comfort Order provides AAA the authority to administer this arbitration as filed” and that AAA would continue to “hold this matter in abeyance and will follow any court order regarding claims against the debtor to be administered in the above captioned arbitration.”

21. Therefore, Plaintiff sought relief from stay from this Court to proceed with the AAA Arbitration of the State Court Action which relief was granted by this Court on August 26, 2014 as evidenced by the Order entered by this Court on August 29, 2014, Dkt. 201.

22. After the hearing on Plaintiffs’ motion for relief from stay on August 26, 2014, this Court converted Thomas and his wife’s Chapter 11 proceeding to one under Chapter 7 on August 29, 2014, Dkt. 190.

III. FIRST CLAIM FOR RELIEF
For Determination of Nondischargeability
(Against Defendant Thomas Only)

23. Plaintiff incorporates the allegations set forth in paragraphs 1 through 22 of this Complaint as though set forth fully herein.

1 24. Plaintiff is informed and believes that he will prevail in the AAA Arbitration
2 Proceeding and the State Court Action and that he has a valid claim against Thomas for
3 Malicious Prosecution (Wrongful Use of Civil Proceedings) in connection with Thomas' filing
4 of the State Court Action against Plaintiff, individually.

5 25. Thomas commenced or directed that the State Court Action be brought against
6 Plaintiff, individually, without probable cause.

7 26. Thomas willfully and maliciously initiated the State Court Action against
8 Plaintiff, individually, with the intent to cause Plaintiff harm.

9 27. No reasonable person in Thomas' circumstances would have believed that there
10 were reasonable grounds to bring the State Court Action against Plaintiff, individually.

11 28. Due to the malicious and willful actions of Thomas, Plaintiff has suffered out of
12 pocket loss in the form of attorney fees and costs, as well as emotional distress and injury to
13 reputation because of groundless allegations made in pleadings which are public records and has
14 been compelled to defend against a fabricated claim subjecting him not only to the panoply of
15 psychological pressures most civil defendants suffer, but also the additional stress of attempting
16 to resist a suit commenced out of spite or ill will.

17 29. Plaintiff has been damaged by the conduct of Defendant and has been forced to
18 retain counsel to pursue this claim and is entitled to reimbursement of legal fees and costs of
19 court in this proceeding.

20 30. Due to the deadline to object to the dischargeability of certain debts (December 8,
21 2014) it is necessary that this claim be alleged prior to the conclusion of the AAA Arbitration
22 Proceeding.

23 WHEREFORE, Plaintiff prays for relief as set forth below:

24 1. For the preservation of Plaintiff's claim for Malicious Prosecution (Wrongful Use
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of Civil Proceedings) against Thomas;

2. For a determination that any judgment entered in any Malicious Prosecution (Wrongful Use of Civil Proceedings) case brought by Plaintiff associated with the AAA Arbitration and/or the State Court Action be deemed nondischargeable pursuant to 11 U.S.C. §523(a)(6);
3. For reasonable attorneys' fees and costs of suit; and
4. For such other and further relief as the Court may deem appropriate.

DATED this 2nd day of December, 2014.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

By: /s/ Stefanie T. Sharp
Stefanie T. Sharp, Esq.
Attorneys for William McGrane